STATE OF WISCONSIN PERSONNEL COMMISSION

TERRY KLEISCH, \*

Appellant,

v. \* ORDER

The Department of Health and Social Services,

Respondent.

Case No. 78-151-PC \*

Following a hearing and the dissemination of a proposed decision, the appellant requested oral argument before the Commission and also requested the Commission use as evidence the determination and recorded proceedings in a companion unemployment compensation appeal. The respondent has objected to these requests.

The request for oral argument is granted. The appellant will have a maximum of 20 minutes, the respondent 20 minutes, and the appellant 5 minutes for reply.

The request for admission in evidence of the unemployment compensation determination and record is denied. That determination was made in the context of a proceeding governed by statutes and legal standards that are different from those governing this appeal and cannot be binding on the parties. See <a href="Prior v. DOA">Prior v. DOA</a>, Wis. Pers. Bd. Case No. 77-70 (5/18/78). Furthermore, in the opinion of the Commission, the parties presentation of their cases are shaped by those different statutes and legal standards; what may be significant in those proceedings may be insignificant here, or vice-versa. A party might tailor its presentation on disputed issues of fact entirely differently in the two forums.

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The Commission believes that any possible probative value of the findings with respect to the ultimate fact issues in this appeal are far outweighed by these factors and the resultant need to relitigate, in essence, collateral issues as to what went on in the unemployment compensation hearing.

The record of the unemployment compensation proceedings is hearsay of the kind the supreme court specifically held was inadmissible in State v. McFarren. 62 Wis 2d 492. 506. 267. N.W. 2d 249 (1974).

## ORDER

The appellant's request for oral argument is granted and his request for use as evidence of the unemployment compensation record and determination is denied.

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Joseph W. Wiley

Commission Chairperson

Charlotte M. Higbee

Commissioner

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## PARTIAL DISSENT

I dissent with the part of this order which prohibits the use of the findings from the unemployment compensation proceeding. Both parties participated in that proceeding and presumably had an opportunity to examine witnesses. While those findings may not be binding and conclusive on the parties or Commission, I fail to see why they can not be received in evidence for whatever probative value they do possess.

Dated:  $/ \sim 2.5$  , 1979.

Edward D. Durkin